



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
Washington, D.C. 20231
www.uspto.gov
DW 06-02

Paper No. 4

GINGER R. DREGER
KNOBBE MARTENS OLSON & BEAR
SUITE 1150
201 CALIFORNIA STREET
SAN FRANCISCO CA 94111

COPY MAILED

JUN 14 2002

OFFICE OF PETITIONS

In re Application of :
Baker et al. :
Application No. 10/017,867 :
Filed: 13 December, 2001 :
Attorney's Docket No. P2830P1C60 :

ON PETITION

This is a decision on the petition filed on 30 April, 2002, requesting that the above-identified application, including Figure 246 described in the specification be accorded a filing date of 13 December, 2001.

On 13 December, 2001, the application was filed.

On 26 February, 2002, Initial Patent Examination Division mailed a Notice to Comply With Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures stating, *inter alia*, that the application had been accorded a filing date of 13 December, 2001, but that Figure 246 described in the specification appeared to have been omitted.

In response, on 30 April, 2002 (certificate of mailing date 24 April, 2002), one (1) sheet of drawings containing Figure 246 and the present petition were submitted. Petitioners assert that Figure 246 was filed with the other application papers on 13 December, 2001, but was subsequently misplaced in the U.S. Patent and Trademark Office (Office). In support, a copy of petitioners' postcard receipt was supplied with the present petition. The postcard receipt shows an Office date stamp of 13 December, 2001, and references the above-identified application number. The postcard identifies the application by attorney docket number and first-named inventor's name, and acknowledges receipt, *inter alia*, of 249 sheets of drawings. Petitioners request that the application, including the drawings containing Figure 246, be accorded a filing date of 11 December, 2001.

A review of the record reveals that 248 sheets of drawings, containing Figures 1-110, 111A, 111B, 112-142, 143A, 143B, 144-178, 179A, 179B, 180-245 are located among the application papers deposited on 13 December, 2001. However, the evidence is

convincing that the application papers deposited on 13 December, 2001, included 249 sheets of drawings and that the sheet of drawings containing Figure 246 was subsequently misplaced in the Office. Therefore, the application, including the one (1) sheet of drawing containing Figure 246 as described in the specification, is entitled to a filing date of 13 December, 2001.

The "Notice" mailed on 26 February, 2002, is vacated to the extent that it stated that Figure 246 appeared to have been omitted from the application.

In view of the above, the petition is granted. The \$130.00 petition fee paid on 30 April, 2002, will be refunded to counsel's deposit account, No. 11-1410.

The application will be processed, using the application papers filed on 13 December, 2001, and the copy of Figure 246 of the drawings supplied on 30 April, 2002.

The application is being returned to Initial Patent Examination Division for further processing with a filing date of 13 December, 2001, using the application papers filed on 13 December, 2001, and the one (1) sheet of drawing containing Figure 246, supplied on 30 April, 2002, and for an indication on the bib-data sheet that 249 sheets of drawings were present on filing.

Telephone inquiries should be directed to Petitions Attorney Douglas I. Wood at 703 308-6918.



Douglas I. Wood
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy